

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

Dedra Linette Gamble,)	
)	
Plaintiff,)	
)	
vs.)	Civil Action No.: 1:12-1459-TLW
)	
Carolyn W. Colvin, Acting)	
Commissioner of Social Security)	
Administration,)	
)	
Defendant.)	
_____)	

ORDER

The Plaintiff, Dedra Linette Gamble (“Plaintiff”), brought this action pursuant to 42 U.S.C. § 405(g) and § 1383(c)(3) of the Social Security Act to obtain judicial review of a final decision of the Defendant, Commissioner of Social Security Administration (“Commissioner” or “Defendant”), denying her claims for Disability Insurance Benefits and Supplemental Security Income. (Doc. #1). On February 8, 2013, the Commissioner filed a Motion to Dismiss the above-captioned action pursuant to Federal Rule of Civil Procedure 12(b)(1) due to Plaintiff’s failure to file a timely claim in the District Court as required by 42 U.S.C. § 405(g). (Doc. #18). The Plaintiff filed a Response opposing the Commissioner’s motion on February 25, 2013 (Doc. #20), to which the Commissioner replied on March 6, 2013 (Doc. #21).

This matter is before this Court for review of the Report and Recommendation (“the Report”) filed on March 11, 2013 by United States Magistrate Judge Shiva V. Hodges, to whom this case had previously been assigned pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2) DSC. (Doc. #23). In the Report, the Magistrate Judge recommends that this Court grant

the Commissioner's Motion to Dismiss the Plaintiff's Complaint. (See Doc. #23). The Plaintiff filed objections to the Magistrate Judge's Report on March 28, 2013. (Doc. #24). The Commissioner filed a Reply to Plaintiff's objections on April 3, 2013. (Doc. #25).

This Court is charged with conducting a de novo review of any portion of the Magistrate Judge's Report and Recommendation to which a specific objection is registered, and may accept, reject, or modify, in whole or in part, the recommendations contained in that report. 28 U.S.C. § 636.

In conducting this review, the Court applies the following standard:

The magistrate judge makes only a recommendation to the Court, to which any party may file written objections The Court is not bound by the recommendation of the magistrate judge but, instead, retains responsibility for the final determination. The Court is required to make a de novo determination of those portions of the report or specified findings or recommendation as to which an objection is made. However, the Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the report and recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court's review of the Report thus depends on whether or not objections have been filed, in either case the Court is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations.

Wallace v. Housing Auth. of the City of Columbia, 791 F. Supp. 137, 138 (D.S.C. 1992) (citations omitted).

This Court has carefully reviewed the Magistrate Judge's Report and Recommendation (Doc. #23), the Plaintiff's objections thereto (Doc. #24), as well as all other relevant motions, filings, and documents. The Magistrate Judge notes in the Report the factual background involved in this matter and analyzes the relevant case law, including a discussion of the case raised by the Plaintiff, Canales v. Sullivan, 936 F.2d 755 (2d Cir. 1991). The Report and Recommendation also notes that the "Plaintiff has demonstrated no record of mental impairment during the relevant time period . . . [relying] solely on the ALJ's finding[]" regarding mental impairment. (Doc. #23 at 5). The Plaintiff made no showing of incapacity or mental impairment during the sixty (60) day time period for filing.

After careful consideration, **IT IS ORDERED** that the Magistrate Judge's Report and Recommendation (Doc. #23) be, and hereby is, **ACCEPTED**. For the reasons articulated by the Magistrate Judge, the Commissioner's Motion to Dismiss (Doc. #18) is **GRANTED**. This case is dismissed.

IT IS SO ORDERED.

s/ Terry L. Wooten
TERRY L. WOOTEN
Chief United States District Judge

January 16, 2014
Columbia, South Carolina